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(1)

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 42

THE HEIRS OF SAMUEL GARLAND, DECEASED,
appellants

v.

THE CHOCTAW NATION

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the Court of Claims (R. 19-22) is reported in 59 Ct. Cls. 768.

The first opinion of the Court of Claims in this case is reported in 54 Ct. Cls. 55, and the opinion of this Court upon an appeal taken by appellant herein (plaintiff below) is reported in 256 U. S. 439.

JURISDICTION

The judgment to be reviewed was entered on June 9, 1924. (R. 22.) Motion for a new trial, made on September 15, 1924, was entertained by

the court and denied on October 28, 1924. (R. 23.) The plaintiff's application for an appeal to this Court was filed November 24, 1924 (R. 23), under the provisions of Sections 182 and 242 of the Judicial Code. (Act of March 3, 1911, Chap. 231, 36 Stat. 1087, 1142, 1157.)

THE QUESTION

This suit was brought to recover compensation for services rendered by Garland to the Choctaw Nation, and, since the jurisdictional act directed that the award should be on a *quantum meruit* basis, the only questions are those of fact, i. e., what was the reasonable value of the services rendered and how much has already been paid.

STATEMENT

In 1853 the Choctaw Nation appointed a delegation, of which Garland was a member, to represent it in the collection of its claim against the United States growing out of the lands east of the Mississippi ceded by the Nation to the United States. This suit was brought by Garland's heirs to recover pay for the services rendered by him as a member of the delegation. Jurisdiction to hear and determine the case was conferred upon the Court of Claims by Section 5 of the Act of May 29, 1918 (Chap. 216, 35 Stat. 444, 445), which reads as follows:

That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of

Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of *quantum meruit* for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation.

The questions involved are the value, if any, of such services, and whether such value exceeds the payments already made.

On the first trial of this case the Court of Claims dismissed the petition, holding that the delegation created by the resolution of the Choctaw National Council of November 9, 1853, was a continuing body (54 Ct. Cls. 55, 60, 62), and that the payment to the successors of the original delegation "served to discharge the nation from any further liability in this matter to the delegation or any member thereof or their representatives" (*id.* 65; 256 U. S. 439, 442). On appeal to this Court this decision was reversed, and it was held—

That the obligation of the Choctaw Nation was to the delegates individually and not to the delegation as a body, and that the two existing delegates, in collecting and disbursing the money, were agents of the Nation

merely, so that its payment to them did not discharge the Choctaw Nation's obligation to the heirs of a former delegate who had rendered part of the services. (256 U. S. 439, per syllabus.)

This Court, being of the opinion that under the terms of the jurisdictional act (R. 1) judgment was "to be rendered on the principle of quantum meruit" for what Garland did and expended," remanded the case in the following words (Id. 445):

Upon the return of the case it (the Court of Claims) may determine the amount due Garland, if anything, dependent upon what his services contributed in securing the congressional appropriation.

In its findings of fact the Court of Claims set forth in detail the work done by the delegation and Garland's connection with it and the results accomplished in the collection of the Nation's claims. The nature and extent of Garland's services are fully dealt with. (R. 17.) The findings also show that Garland was paid altogether the sum of \$86,876.15. (R. 13, 17-19.)

There is no finding of fact as to the money value of Garland's services, but the conclusion of law was that the plaintiffs were not entitled to recover anything, and in the opinion, after referring to what had already been paid, the Court said (R. 22):

It is absolutely inconceivable that he could have earned more.

While a motion to remand for additional findings is made, the motion does not ask for a finding of value of the service.

SUMMARY OF ARGUMENT

The jurisdictional act directs that judgment shall be rendered on the principle of *quantum meruit* for services rendered and expenses incurred, and the mandate of this Court on the former appeal contains the same direction. This required a disregard of any contracts and left only a simple question of fact for the determination of the Court of Claims. There is no finding of value of services, but its absence makes it clear that the findings would not support a judgment for appellants. The appellants do not seek a remand for a finding of reasonable value of the service. The opinion of the Court of Claims shows that if supplied it would be adverse to the claimants. Their motion to remand proceeds on the erroneous theory that contracts for compensation should be controlling as a measure of value. Since there is no finding of value which would support a judgment for appellants, and since they do not ask, and it would be futile, to have the case remanded for such a finding on the basis of *quantum meruit*, which is the only proper basis, the judgment should be affirmed.

ARGUMENT**THE FINDINGS WOULD NOT SUPPORT A JUDGMENT FOR APPELLANTS**

We will not attempt to follow in detail the method of treatment adopted by the appellants. The case is a very simple one and the summary of argument needs little elaboration.

The only questions are those of fact, i. e., the value of the services rendered by Garland and the amount already paid for them.

The terms of the jurisdictional act and of the opinion and mandate of this Court on the former appeal leave no room for any basis of recovery other than *quantum meruit*. The various contracts or engagements respecting compensation made by the Nation and which the appellants claim should control the recovery or be conclusive evidence of value were obliterated from the case by the terms of the jurisdictional act, except to the extent that they may be considered as items of evidence bearing on the reasonable value of the services rendered. As the jurisdictional act gives appellants their only right to be in court, they must recover according to its terms or not at all.

Appellants complain of the amounts that the court below found had been paid for these services. The court found as a fact that certain sums had been paid direct to Garland or his representatives, and also that the agents of the Choctaw Nation had paid certain liabilities of the delegation, for a proportionate share of which Garland was liable. (R. 14.) These findings are of fact or, at most, inseparable questions of law and fact that will not be reviewed by this Court. (*United States v. Omaha Tribe on Indians*, 253 U. S. 275, 281.)

Strangely, the Court of Claims overlooked making a finding as to the value in money of Garland's

services. It did find the amount paid him. Its opinion shows clearly enough that if a finding of value had been made it would have been that Garland was paid as much as or more than he had earned. The statement in the opinion may not be used to supplement a deficiency in the findings (*Stone v. United States*, 164 U. S. 380, 383; *Crocker v. United States*, 240 U. S. 74, 78), but the opinion does disclose what that finding would be, if made, and that to remand the case for such a finding would be futile.

The absence of a finding of value makes it impossible for the findings to support a judgment for the appellants, and on the findings as they stand the appellants are not entitled to recover.

Although the appellants have made a motion to remand for further findings, they have not asked that the case be remanded for a finding of value on the basis of *quantum meruit*, which is the only basis on which recovery may be allowed. They no doubt realize that a remand for that purpose would be futile, as the opinion discloses that the finding would be adverse. Their whole case proceeds on the erroneous theory that some other basis than *quantum meruit* should be used, or that the contracts for compensation made by the Choctaw Nation should be accepted as conclusive evidence of the value of the services—a contention which, if sustained, would convert the case into an action on a contract which the jurisdictional act said it should not be.

The eight matters on which additional findings are asked are open to objection, because they amount to a cross-examination of the lower Court, and ask for the transmission of evidence to this Court, and in effect ask for this Court to pass upon the evidence (See *McClure v. United States*, 116 U. S. 145), and, finally, because they nowhere ask that which the appellants alone would have the right to ask—a finding of value on the basis of *quantum meruit*.

Since there is no finding to support the contentions of appellants, and the appellants do not ask that the case be remanded for such a finding, and since it is obvious that, in any event, a remand for that purpose would be futile, the judgment should be affirmed.

Respectfully submitted.

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NOVEMBER, 1926.

